

IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION NUMBER 19094 OF 1995

Between:

Sri D. Ramakrishna  
son of late Sri Dase Gowda  
aged about 42 years  
working as Helper  
Token No. B.400  
Spun Silk Mills  
Channapatna 571501

and residing at  
Sankalagere  
Shetty Hally Post  
Channapatna Taluk  
Bangalore Rural District

-Petitioner

(By Sri V. S. Naik, Advocate)

And:

The Management of Karnataka  
Silk Industries Corporation  
(A Government of Karnataka  
Enterprise)  
Unit: Spun Silk Mills  
Channapatna 571 501  
represented by the  
General Manager

-Respondent

(By Sri B. C. Prabhakar, Advocate)

This writ petition is filed under Articles 226 and 227 of the Constitution seeking to quash that portion of the order relating to recovery of interim relief paid to the petitioner by the Corporation during the pendency of the industrial adjudication as per Order dated 16-1-1995 (Annexure-D).

This writ petition coming on for hearing and having been reserved for orders, the Court this day made the following:

ORDER

O R D E R

In this writ petition under Articles 226 and 227 of the Constitution, petitioner seeks quashing of that portion of the order of the respondent dated 16-1-1995 at Annexure-D, which directs recovery of the amount paid to the petitioner by way of interim relief during the pendency of the dispute before the Labour Court.

2. Petitioner had been appointed as Casual Labourer in January 1982, and he was subsequently confirmed in service. In 1987, a domestic enquiry was held against him and, on proof of misconduct, he was dismissed from service. He raised an industrial dispute in that regard by filing an application under Section 10(4A) of the Industrial Disputes Act, 1947 ('Act' for short) before the Additional Labour Court, Bangalore. The Labour Court, by its order dated 3-1-1990 at Annexure-A, initially held the domestic enquiry to be invalid. Thereafter, petitioner filed an application seeking interim relief, pleading that he had not been gainfully employed, that it was difficult for him to maintain himself and his family consisting of eight persons, and that, therefore, interim relief may be paid to him. It needs to be mentioned

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at this stage that even during domestic enquiry, petitioner had been placed under suspension and was being paid subsistence allowance. This application seeking for interim relief was allowed by the Labour Court by its order dated 2-6-1990 at Annexure-B. Labour Court referred to a decision of this Court in MYSORE CEMENTS LIMITED v. B. R. SIDDARAMAIAH (67 FJR 136), to the effect that once a domestic enquiry is set aside as invalid, the workman shall be presumed to be under suspension till the disposal of the reference, and, as such, he would be entitled to interim relief equal to the subsistence allowance if he was not gainfully employed. Labour Court also referred to the said decision for holding that the workman would be entitled to 75 per cent of the last drawn wage. Since the petitioner had been drawing Rs.800/- per month as last drawn wages, Labour Court <sup>granted</sup> interim relief at Rs.600/- per month from the date of the application for interim relief till the disposal of the reference. The dispute eventually came to be adjudicated on merits leading to passing of an award dated 23-5-1994 at Annexure-C.

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Labour Court held the charge as proved, but acting under Section 11A of the Act, observed thus:

"Taking the circumstances of this case into consideration, I am of the opinion that the punishment imposed by the Disciplinary Authority is in a sense disproportionate to the gravity of the offence committed by the first party workman. A lesser punishment would satisfy the requirements of the principle of proportionality and produce a salutary effect on the first party workman."

*While taking*  
~~workman in~~ this view that the Labour Court has passed the award, the operative portion of which reads thus:

" A W A R D

The claim petition filed by the first party workman is allowed in part.

The order of dismissal passed by the second party No.SSM/C/14/88-89 dated 29-03-1988/01.04.1988 is set aside.

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The second party is directed to reinstate the first party into service with continuity of service.

The second party is directed to withhold two increments. The claim of the first party for the back wages is rejected. Parties to bear their own costs."

While implementing the said award, the respondent employer passed the order dated 16-1-1995 at Annexure-D ordering reinstatement of the petitioner subject to the four conditions specified in the said Annexure-D. The first condition is that from 1-4-1988 i.e. from the date of the order of dismissal that came to be set aside by the Labour Court, until the date of reinstatement, the period would be considered as continued service. The second condition is that the back wages would not <sup>be</sup> paid. The third condition is that the two annual increments are withheld with cumulative effect. The fourth condition, which the petitioner now seeks to be quashed in this writ petition, is that the petitioner should repay in instalments the interim relief that was paid to him.

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during the period reference was pending before the Labour Court, i.e. the interim relief of Rs.600/- per month as ordered in I.A.No.I on 2-6-1990 at Annexure-B.

3. Sri B. C. Prabhakar, learned counsel for the respondent, refers to the following observations of the Labour Court in the award to urge that by way of lesser punishment, the Labour Court, acting under Section 11A of the Act, substituted not only withholding of two annual increments with cumulative effect:

"Ends of justice would be met if the petitioner is subjected to the punishment of loss of back wages and withholding of two increments with cumulative effect with an order of reinstatement in service."

Sri V. S. Naik for the petitioner, on the other hand, urges that, as held by this Court in the decision referred to above in the course of the award, what is paid by way of interim relief is the subsistence allowance, and that the said amount cannot, in any circumstances, be recovered from the petitioner, and that such would be the

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case even if the application under Section 10(4A) of the Act filed by the petitioner workman had been dismissed by the Labour Court. For the reasons to be presently stated, it would be unnecessary to go into this aspect.

4. It is true, the Labour Court did refer to the punishment of dismissal from service being disproportionate to the charge proved, and the necessity of substituting the lesser punishment. What is discussed in the body of the award, however, is not reflected in the operative portion of the award. The operative portion of the award is extracted above. The said operative portion would show that the only punishment, by way of lesser punishment substituted, is withholding of two increments. No doubt, the said operative portion refers to the claim of the petition for back wages as having been rejected. But the operative portion does not reflect the submission of Sri B. C. Prabhakar for the respondent that denial of back wages is by way of lesser punishment. The only conclusion that could, therefore, be drawn by reading the operative portion of the award is that the order of dismissal is set aside, and that the

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petitioner is to be reinstated in service with continuity of service but without back wages, with the punishment of withholding of two increments. The said operative portion of the award cannot be stretched to enable the respondent to recover from the petitioner, the amount paid as interim relief during the pendency of the dispute before the Labour Court. Labour Court did not so direct.

It is only <sup>if</sup> such direction had been made could we have gone into the question as to whether the interim relief granted can ever be directed to be repaid at all, the same being in the nature of subsistence allowance or whether it becomes necessary to repay the same when denial of full back wages is awarded as lesser punishment. In this particular case, at least, this question does not arise for consideration because of the wordings of the operative portion of the award as extracted above. In the circumstances, Annexure-D issued by the respondent dated 16-1-1995 with regard to recovery of the amount paid as interim relief, cannot be legally sustained.





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5. Petition is allowed. Fourth condition in Annexure-D relating to recovery of the amount paid by way of interim relief, is quashed.

Sd/-  
JUDGE

